

REMARKS**Election/Restriction**

The Patent Office, in its communication of April 28, 2003, issued a restriction requirement identifying Species I as the embodiment of Figure 1 and Species II as the embodiment of Figure 2. The Patent Office also identified subspecies A as the embodiment of Figure 9 and subspecies B as the embodiment of Figure 10. According to M.P.E.P. § 808, "[e]very requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why the inventions *as claimed* are either independent or distinct"

To provide a complete response, Applicant provisionally elects Species I, subspecies A, claims 1-37 with traverse. Although there are distinctions between Figure 1 and 2 and Figures 9 and 10, these distinctions are not delineated in the *claims*. Namely, the claims do not delineate between wireless communication environment (Figure 1) and a direct communications environment (Figure 2). Neither do the claims delineate between data communication initiated by the host computer (Figure 9) and communication initiated by the vending machine (Figure 10). Since the claims are generic as to the type of communications environment and to the initiation of the data communication, all claims 1-37 are generic.

Further, M.P.E.P. § 809.02(d) states that "[w]here only generic claims are presented, no restriction can be required except in those applications where the generic claims recite such a multiplicity of species that an unduly extensive and burdensome search is necessary." In order for the restriction of generic claims 1-37 to be proper, the present application must require an "unduly extensive and burdensome search." Applicant contends that the two species and two subspecies identified by the Patent Office are not such a multiplicity of species that an unduly extensive and burdensome search is necessary. This is evidenced by the fact that the Patent Office has already conducted a search producing relevant prior art upon which the rejections of all claims 1-37 are based. Therefore, since all claims 1-37 are generic and the present application does not have such a multiplicity of species that an unduly extensive and burdensome search is necessary, Applicant requests withdrawal of the restriction requirement at this time.

If the Patent Office disagrees, Applicant invites the Examiner to contact the undersigned attorney of record by telephone to discuss which claims are not generic with respect to the species and subspecies outlined by the Patent Office or why the present application requires an unduly extensive and burdensome search.

Claim Rejections

Before discussing the rejections of claims 1-37, a discussion of U.S. Patent No. 6,230,150 to Walker may be beneficial. Walker discloses a system for testing the profitability of a price change at a vending machine. Referring to Figures 1, 3, 5A, and 5B, Walker discloses a central server (300) having a price testing databases (500) storing a price alteration factor (535), test start date (540), trial period duration (545), success determination criteria (550), trial period profitability change (555), and test status (560). In Figures 4, 6A, and 6B, Walker discloses a vending machine having an inventory database (470) that stores previous item price (635), ~~quantity sold at previous item price (640), profitability at previous item price (645), test item price (650), quantity sold at test item price (655), profitability at test item price (660), and change in profitability (665).~~ Figures 7A and 7B illustrate the operation of Walker's system. In general, the price alteration factor (535) and the success determination criteria (550) are predefined. The central server (300) retrieves the previous item price (635) from the vending machine and computes the test item price (645). The central server (300) communicates the test item price (645) to the vending machine where it is stored in the inventory database (470). During the testing period, the vending machine records the quantity sold at the test item price (655). When the testing period is complete, the central server (300) requests the change in profitability (665) from the vending machine. The vending machine calculates and stores the profitability at test item price (660) and the change in profitability (665) and communicates the change in profitability (665) to the central server (300). Based on the change in profitability (665) from the vending machine and the success determination criteria (550), the central server (300) determines if the test was a success or failure.

The Patent Office rejected claims 1-6, 8, 9, 12, 13-20, 22, 23, 26-32, 34, and 35 under 35 U.S.C. § 102(e) as being anticipated by Walker (U.S. Patent No. 6,230,150).

Regarding claim 1, Walker fails to disclose at least a control system adapted to generate difference indicia capable of instructing the central processing system to *modify the reference vending data to reflect the new vending data*. Further, Walker fails to disclose that *the reference data at the central processing system is modified using the difference data to reflect the new vending data*. As discussed above, Walker determines a quantity of items sold at the test price, profitability at the test price, and change in profitability. The change in profitability is transmitted to the central server where it is compared to a threshold value to determine the

success or failure of the testing. However, the change in profitability transmitted to the central server is not used to modify reference vending data to reflect new vending data in the vending machine-database. Therefore, claim 1 is allowable.

For at least the same reasons claim 1 is allowable, claims 2-6, 8, 9, 12, 13-20, 22, 23, 26-32, 34, and 35 are allowable.

The Patent Office rejected claims 10, 24, and 36 under 35 U.S.C. § 103(a) as being unpatentable over Walker (U.S. Patent No. 6,230,150) in view of Kolls (U.S. Patent No. 6,505,095). For at least the same reasons claims 1, 15, and 27 are allowable, claims 10, 24, and 36 are also allowable.

Applicant would like to thank the examiner for the indication that claims 7, 21, and 33 contain allowable subject matter.

In view of the discussion above, claims 1-37 are allowable. Reconsideration is respectfully requested. If any issues remain, the examiner is encouraged to contact the undersigned attorney of record to expedite allowance and issue.

Respectfully submitted,

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